



Scanned 28 Jun 07
TOWN OF BROOKLINE
Massachusetts

BOARD OF APPEALS

DIANE R. GORDON, Co-Chair
HARRY MILLER, Co-Chair
BAILEY S. SILBERT

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PATRICK J. WARD, Secretary

**TOWN OF BROOKLINE
BOARD OF APPEALS
NO. 070030**

Petitioners, Buell and Margaret Hollister applied to the Building Commissioner for permission to construct two attached single family townhouses to the rear of the original premises located at 44 Davis Avenue. A previous rear addition is to be demolished, approval having been obtained from the Preservation Commission. The Building Department denied the petitioners application as the proposal violated the Town Zoning By-Law. An appeal was taken to this Board.

On April 12th, 2007 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals. The Board then fixed the date of June 7, 2007 at 7:30 p.m. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing of the appeal. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on May 24th and 31st in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
NOTICE OF HEARING

PETITIONER: Buell Hollister and Margaret Hollister

LOCATION OF PREMISES: 44 Davis Avenue

DATE AND PLACE OF HEARING

Thursday June 7, 2007

At 7:30 p.m. in the Selectman's Hearing Room on the sixth floor of Town Hall 333 Washington Street Brookline, Massachusetts.

A public hearing will be held for a special permits from Section 4.07, Table of Use Regulation, Use #5; Section 5.09.2.b Design Review; Section 5.43 Exceptions to Yard and Setback Regulations; Section 6.04.12, Design of Off Street Parking Regulations; and Section 8.02.2 Alteration and Extension; and a variance from Section 5.48.2, Attached One-Family Dwellings in T Districts; 5.60, Side Yard Requirements; 5.61, Projections into Side Yards; 5.62, Fences and Terraces in Side Yards; 5.63, Accessory Buildings or Structures in Side Yards; 5.70, Rear Yard Requirements; 5.71, Projections into Rear Yards; 5.74, Fences and Terraces in Rear Yards; Section 6.02.1, Table of Off Street Parking Requirements; 6.04.2.d, Design of Off Street Parking Facilities.

Said premises are located in a T-5 (Two Family and attached Single Family) Residential District.

The Town of Brookline does not discriminate on the basis of disability in admission to, or access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Co-ordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Diane R. Gordon
Harry Miller
Bailey Silbert

At the time and place specified in the notice a public hearing was held by this Board. Present were Diane Gordon, Chair, Bailey Silbert and Murray Shockett. Petitioners were represented by Attorney Jacob Walters of Goldenberg & Walters of Seven Harvard Street in Brookline. Mr. Walters stated that Mr. & Mrs. Hollister were long time Brookline residents and planned to move from the larger original home into one of the newly created townhouse units. Mr. Walters stated that all of the required relief could be granted by Special Permit. Mr. Walters stated that relief was needed in accordance with the following sections of the By Law: Section 4.07, Use #5, attached single family dwellings, Section 5.09.2.b Design Review; Section 5.43 Exceptions to Yard and Setback Requirements, Section 6.04.12 Design of Off Street Parking Facilities and Section 8.02.2, Extension or Alteration. Mr. Walters stated that certain of the dimensional requirements could be waived pursuant to Section 5.43 provided counterbalancing amenities were being offered. In this case Mr. Walters indicated that the counterbalancing amenities would be in the form of landscaping throughout the property, some of which would serve to screen the parking spaces and the new addition. With reference to parking, Mr. Walters stated that the applicants are providing the required number of spaces, but seek a waiver of dimensional requirements for the spaces and driveway under Section 6.04.12. Specifically Mr. Walters mentioned the driveway width, turn around space for parking space #7 and the side yard setback for the parking spaces being created. Under Section 6.04.12, the Board may waive dimensional requirements where new parking is being created for existing structures. Mr. Walters stated that although two new townhouse units were indeed being created, the new parking spaces would also serve the existing structure and fell within Section 6.04.12. Mr. Walters mentioned that concern for the retaining wall separating the petitioners' property from their abutters to the rear was evidenced by the neighbors, and that the petitioners have agreed to have an engineer examine the retaining wall to determine the effect the proposed construction might have upon it. Mr. Walters indicated that the petitioners accepted the additional condition proposed by the Planning Board relative to the retaining wall and would work with their neighbors to ensure no damage would result from the proposed construction. Mr. Walters closed by providing letters of support for the applicants' proposal from several of the neighbors.

The Chair then called upon Stephen Tice, the petitioners' architect. Mr. Tice stated that it was his intent and that of the petitioners to incorporate the architectural details of the original structure into the addition. Mr. Tice stated that he did not anticipate any difficulties with the current driveway, which was less than the required 20' width as the subject property is intended to contain only three units. Mr. Tice mentioned that he intends to push parking space #1 forward in order to provide more turn around room for vehicles and also stated that parking space #7 was not likely to be used except as a guest space. Mr. Tice also addressed the retaining wall issue and stated that a geotechnical engineer has been retained to evaluate the retaining wall and agreed to share the evaluation with the abutters.

The Chair then recognized John Feidelson of 23 White Place, who expressed concern that the proposed construction might have a negative impact upon the retaining wall. The Chair requested that Mr. Feidelson be provided a copy of the engineer's report.

The Chair then called upon Polly Selkoe of the Brookline Planning Board. Ms. Selkoe stated that the Planning Board was supportive of the applicants' proposal, and noted that the addition will be in keeping with the architectural style of the original dwelling. Ms. Selkoe also stated that the parking at the site will be less intense than in the past, as the number of spaces will be reduced from eleven to seven. Ms. Selkoe closed by stating the proposed conditions recommended by the Planning Board, which were:

1. Prior to the issuance of a building permit, final elevations shall be subject to the review and approval of the Assistant Director of Regulatory Planning,
2. Prior to the issuance of a building permit, a final certified site plan, including parking layout, landscaping and fencing, and mechanical equipment location, shall be subject to the review and approval of the Assistant Director of Regulatory Planning,
3. Prior to the issuance of a building permit, the applicant shall engage a licensed geotechnical engineer to evaluate the retaining wall at the rear of the property to determine the impact, if any, of the proposed construction and submit a report to the Assistant Director of Regulatory Planning as well as the abutters and Mr. Feidelson,

4. Prior to the submission of construction drawings to the Building Commissioner for purposes of obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: (a) a final site plan, stamped and signed by a registered engineer or land surveyor, including fencing, lighting and location and screening of utilities, (b) building elevations and floor plans stamped and signed by a registered architect; and evidence of recording of the Board of Appeals decision with the Registry of Deeds.

The Chair then called upon Frank Hitchcock of the Brookline Building Department. Mr. Hitchcock stated that all of the relief could be granted by Special Permits under Sections 4.07, Use #5, 5.09.2.b, 5.43, 6.04.12 and 8.02.2 of the Zoning By-Law. Mr. Hitchcock stated that as far as the parking was concerned, the applicants had the required number of spaces but needed relief from the dimensional requirements. Mr. Hitchcock added that with only three dwelling units the amount of traffic in and out of the site was not significant. Mr. Hitchcock concluded by stating the Building Department has no objection to the applicants' proposal.

The Board, having heard all testimony, and after review of the plans submitted, voted unanimously to grant a special permits under Sections 4.07, Use #5, Section 5.09.2.b, Section 5.43, Section 6.04.12 and Section 8.02.2, subject to the following conditions:

1. Prior to the issuance of a building permit, final elevations shall be subject to the review and approval of the Assistant Director of Regulatory Planning,
2. Prior to the issuance of a building permit, a final certified site plan, including parking layout, landscaping and fencing, and mechanical equipment location, shall be subject to the review and approval of the Assistant Director of Regulatory Planning,
3. Prior to the issuance of a building permit, the applicant shall engage a licensed geothermal engineer to evaluate the retaining wall at the rear of the property to determine the impact, if any, of the proposed

construction and submit a report to the Assistant Director of Regulatory Planning as well as the abutters and Mr. Fidelson,

4. Prior to the submission of construction drawings to the Building Commissioner for purposes of obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: (a) a final site plan, stamped and signed by a registered engineer or land surveyor, including fencing, lighting and location and screening of utilities, (b) building elevations and floor plans stamped and signed by a registered architect; and evidence of recording of the Board of Appeals decision with the Registry of Deeds.

Unanimous decision of
the Board of Appeals

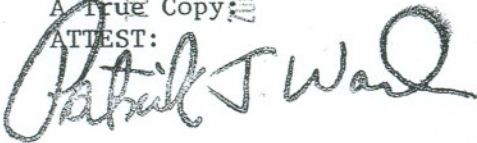


Diane Gordon, Chair

Date of Filing June 25, 2007

A True Copy

ATTEST:



Patrick J. Ward
Board of Appeals